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CONSERVATION COMMISSION
LOWELL, MASSACHUSETTS
December 9, 2020

Note: These minutes are not completed verbatim. For further detail, video recordings are available at the Pollard Library, second floor reference desk or online at www.LTC.org.

Due to the COVID-19 pandemic, this meeting was held virtually using Zoom.

Members Present: Chairwoman Varnum, Commissioner Lovely, Commissioner Dillon, Commissioner Buitenhuis, Commissioner Downs, and Commissioner Standish

Members Absent: None

Others Present: Joe Giniewicz, City of Lowell

CALL TO ORDER

7:00 PM

CONTINUED BUSINESS

Enforcement Order

Duel State Investments LLC

15 Mannion Pl

Littleton, MA 01460

Violation Location: 25 Clifton Street 01852

Enforcement Order for fill dumping and storage of construction materials within the 100-year flood plain.

On Behalf:

Ken Lania, Cornerstone Land Consultants

John Faneros, Owner

Speaking in Favor:

None

Speaking in Opposition:

Denise, 7 Clifton Street

Discussion:

Commissioner Varnum noted that the Commission still hasn't received an NOI or more information and it appears that work activity, including grading with fill, is still occurring on the property. Mr. Lania stated that he

tracked down some old materials that were part of a LOMA in 2018 and had sent them to Administrator Cigliano earlier today - shows floodplain elevation at 104. The LOMA was approved by FEMA in 2019, so looks like all that work is done outside of FEMA elevation 104. Mr. Lania believes that the Commission will see that when it reviews the additional information and will agree that the work is not jurisdictional. Commissioner Varnum asked who determined the 104 elevation. Mr. Lania said the map determines it as area AE - Ron Close and Leo White did this determination for the previous owner. Lot was then subdivided and sold to the current owner. Mr. Lania suggested to continue for 2 weeks to give time to review information and is willing to stake out the 104 elevation.

Additional discussion occurred about whether additional work had commenced since the last meeting. Consensus was made around continuing the matter with the intention that Mr. Lania will go out to the property and mark out the 104-ft line and will discuss again at next meeting. Until then, the Commission is open to any submission from proponent or abutter to get the full picture.

Motion:

Continued to the next meeting of the Commission – January 13, 2021.

NEW BUSINESS

Request for Certificate of Compliance

Flood Law Office, P.C.

549 Rogers Street

Lowell, MA 01852

DEP #206-0607

Project Location: 50 Phoenix Ave 01852

Request for Certificate of Compliance. The above-referenced Order of Conditions has lapsed and is no longer valid, and the work regulated by it was never started.

On Behalf:

Catherine Flood, Applicant's Attorney

Speaking in Favor:

None

Speaking in Opposition:

None

Discussion:

Commissioner Varnum noted the existing OOC is quite old, has since expired and work was never started, so have seen that this is a way to close out the Order so it is not lingering out there. Attorney Flood said that at the time (est. 2007), the property owners were looking to construct a building on the lot, but the owner has no intent to do so at this time.

Motion:

Commissioner Buitenhuys motioned to grant COC in which work was never started and/or completed. Commissioner Lovely seconded the motion. Passes unanimously 6-0.

Emergency Certification

City of Lowell

375 Merrimack Street

Lowell, MA 01852

Project Location: 50-55 Phoenix Ave 01852

The City of Lowell has requested an Emergency Certification to allow a small breach of the existing beaver dams to allow water to flow and abate the flooding emergency resulting from recent rain events and continued beaver activity.

On Behalf:

None

Speaking in Favor:

None

Speaking in Opposition:

None

Discussion:

Commissioner Varum noted the functionality of this wetland, and doesn't want to see the system not function. Commissioner Dillon said that this seems to be a recurring issue in this area, that maybe a beaver deceiver or something to prevent beavers from building in this area may make sense. Commissioner Varum and Buitenhuis stated that they think given its size just keeping an eye on it would be the best approach.

Motion:

Commissioner Lovely motioned to grant an emergency certificate. Commissioner Downs seconded the motion which passed unanimously, 6-0.

Order of Conditions Extension

City of Lowell
375 Merrimack Street
Lowell, MA 01852
DEP #206-0776

Project Location: 350.4 Dutton Street 01852

The City of Lowell has submitted a Request for an Extension to the OOC (DEP #206-0776) issued by the Lowell Conservation Commission on January 25, 2018 for the Hamilton Canal Innovation District (HCID) parking garage. The applicant is requesting a one-year extension until January 25, 2022.

On Behalf:

Justin Mosca, VHB

Speaking in Favor:

None

Speaking in Opposition:

None

Discussion:

L. Varum said that they were back in here fairly recently in order to improve pedestrian access. J. Mosca said that they had been here in August and the applicant is only looking to extend the Order of Conditions for work that was previously approved by the Commission.

Motion:

K. Dillon motioned to extend the order for 1 year, W. Standish seconded, the motion passed unanimously 6-0.

Request for Determination of Applicability

Matt Lalone c/o HEG 1148 Bridge Street LLC

2 International Way
Lawrence, MA 01843

Project Location: 1148 Bridge Street 01854

A Request for Determination of Applicability has been filed by Matt Lalone c/o HEG 1148 Bridge Street LLC to convert the existing restaurant building at 1148 Bridge Street into a recreational marijuana dispensary. Portions of the site are within the 100-ft buffer zone to bordering vegetated wetlands.

On Behalf:

Chris Tymula, Representative

Speaking in Favor:

None

Speaking in Opposition:

None

Discussion:

Commissioner Varum said that this is one of the more unusual wetlands in the City, almost intermittent but still functional. Mr. Tymula went over the redevelopment/ site plan. There is no on-site stormwater management on and the client is simply looking to convert the existing building to adult marijuana recreational facility. The applicant received site plan approval from the Planning Board on Monday and is hoping that the Commission will issue a negative 3 determination this evening. Most work is within the building, with limited site work being conducted outside. The current parking meets zoning requirements. Approximately 3,870 sq. ft. is in buffer zone, most of which is the existing building; a little over 800 sq. ft. in area beside the building is used for parking. The applicant is planning to resurface the parking lot, add two 2 rolling dumpsters in the parking lot footprint, and replace the existing fence with a new security fence. There will be no impact to the wetlands at the rear end of the property. Planned grading of the parking lot will not drain stormwater runoff towards the wetland. Rather stormwater will directed to the City's stormwater system via an agreement with the City that will cost the applicant approximately \$30,000 year. Funds will contribute to the City's existing stormwater mitigation fund. The building itself will not include any changes to the roof line and stormwater runoff from the roof is considered clean runoff.

Commissioner Lovely had the applicant clarify/confirm that their runoff going into City system and fee paying is the help City bring the City system into compliance with current regulations.

Motion:

Commissioner Lovely motioned to issue a negative 3 determination. Commissioner Buitenhuis seconded. Unanimous approval, 6-0.

Request for Determination of Applicability

Daniel Dean
125 Totman Street
Lowell, MA 01854

Project Location: 125 Totman Street 01854

A Request for Determination of Applicability has been filed by Daniel Dean to expand an existing driveway within the 100-ft buffer zone to bordering vegetated wetlands (BVW).

On Behalf:

Daniel Dean

Speaking in Favor:

None

Speaking in Opposition:

None

Discussion:

Mr. Dean stated that he has a stone driveway and grass has been growing through the stones. The City keeps fining him for parking on grass and not being able to maintain the driveway as the City sees fit. He's looking to put recycled asphalt in the grass area so can park without further fines from the City, but was told that he needs to get a permit. Commissioner Varnum feels the big issue with this application is the topography and the steep drop beyond the property line to the wetland. She mentioned that the Commission has received the City comments, and the concern is if soil is disturbed now, there will be loose dirt/ runoff eroding and draining toward the wetland. Consequently, the Commission needs to determine if work can continue with or without further review of potential impacts to wetland. The City's Stormwater team feels this is an area that could critically impact the wetland. Mr. Dean said he spoke to someone (Mike Sidensky?) from the City Water department today about how to proceed with proposal, but he didn't mention what information or level of detail about the project would need to be part of the application. However, now that he understands the potential impacts more, he would like to withdraw the current plan and just finish the area where cars park, then come back in spring with new plan for proposed work at the rear of the property. Commissioner Varnum asked if the construction timeline might extend to the spring anyway? Mr. Dean said if he limits work to around the foundation of home, should be more than 100 feet from wetland and can then come back in the spring with a new plan on how to determine/ treat the back area. Commissioner Varnum said that she would be comfortable with Mr. Dean coming in with a new plan in a month as don't have a plan describing what you're looking to do.

Commissioner Lovely confirmed that looking to do work outside of the jurisdictional area now and come back with more detail for work within the jurisdictional area in the Spring. DD correct.

Commissioner Buitenhuis expressed concern given it looks like 100 feet to front of foundation versus back corner of the foundation based on the current plan. It is critical to make sure the proposed work is outside of jurisdictional area. Mr. Dean asked how look to determine that. Commissioner Buitenhuis suggested to hire a wetlands scientist who would flag it by identifying plants as it is currently difficult to determine whether or not the proposed work is in jurisdictional area. He recommends that the applicant consider withdrawing the RDA and file an NOI.

Commissioner Lovely said that he thinks the board can get the additional information without the cost of an NOI. Feel like the scope of the project doesn't justify and the need for public comment.

Commissioner Buitenhuis said that he's looking at options possible, feel there's a lot of work to do here.

Commissioner Varnum told Mr. Dean that he should understand concerns of both the Stormwater Team and Commission. He needs to somehow demonstrate that water runoff will not cause erosion and damage wetland. There are different strategies to accomplish this and the Commission usually sees them described in a NOI application. Limiting the driveway length so that it doesn't go all the way to the rear of the property would be beneficial. She suggested that Mr. Dean consider getting some help from a consultant as they they may be able to help get through this process versus an NOI.

Mr. Dean said will get in contact with Administrator Cigliano. Commissioner Varnum asked that he make sure get any new materials in shortly after new year so time to review.

Motion:

Commissioner Lovely motioned to continue the matter to 1/13/2021. Commissioner Dillon seconded the motion, which passed unanimously, 6-0.

Notice of Intent

Corey Schutzman
Boston Gas Company
40 Sylvan Road
Waltham, MA 02451
DEP #206-0804

Project Location: Lowell Area Gas Modernization Project 01851

A Notice of Intent (DEP#206-0804) has been filed by Boston Gas Company for a proposed gas pipeline replacement including a section underneath the Lowell Connector and Interstate 495 using Horizontal Directional Drilling (HDD) techniques and along an existing corridor adjacent to US Route 3. The wetland resource areas include Inland Bank, Riverfront Area, Bordering Land Subject to Flooding, Land under Wetlands and Waterways, and bordering vegetated wetlands (BVW). Black Brook and River Meadow Brook are within or adjacent to the project area.

On Behalf:

Corey Schutzman
Matt Hayward
Siona Patisteas

Speaking in Favor:

None

Speaking in Opposition:

None

Discussion:

Those speaking on behalf of the project gave a presentation, noting the following:

- Project to replace existing line that is to enhance safety and reliability of gas network.
- Will replace about 2 miles of pipeline. Pipeline changes size throughout currently, looking to make uniform.
- Will utilize horizontal directional drilling.
- New pipe will be 12 inch as opposed to the scattered 6 and 8 inch lines. The changes will allow them to utilize an inline inspection tool.
- Overall pipeline is 5.8 miles, but of that 3.8 miles is already appropriately sized for inline inspection.
- Majority of project is through existing ROW so as to minimize impacts.
- Showed the variety of permits already achieved, including permits from Conservation Commissions in Chelmsford and Tewksbury.
- Detail provided for construction methods. Applicant will be working outside of the existing ROW. Some tree clearing at grade is necessary, but stumps will be left behind. Work will be done on construction mats to limit wetland impacts and cofferdams will be used to divert the stream around work area. Work in the stream will be about 2 weeks. Work areas include River Meadow Brook, Olde Middlesex Canal, via acmes through Chatham St. Work will also be performed near the cinema at Reiss Ave.
- Mitigation is primarily going to be in-situ restoration. Construction matting is a best practice to make sure wetland isn't dug up from equipment. Restoration activities following construction include planting grasses in disturbed areas and mulch to both stabilize soils and retain moisture. The project is bound by a number of environmental conditions and regulations, that require monitoring to ensure that restoration activities are successful. The applicant believes that natural regrowth is the best restoration method.
- The applicant also discussed some strategies to mitigate invasive species with MassDEP and the applicant will make a payment to the Army Corps, fee in lieu of work program as compensation for wetland impacts.

Commissioner Lovely received clarification regarding necessary permitting, and asked to have rationale of project described. Mr. Hayward explained how they need to have inspections in a certain frequency and how this project will be helpful in terms of long term impacts utilizing the current technology available. Also, because project is does not cross an interstate line, doesn't reach federal-level permitting. Commissioner Lovely asked if this project was prompted by the 2018 Columbia Gas incident, or were plans already in the works for using this in-line inspection technology. Mr. Hayward stated this the incident 2 years ago was a distribution line but this is a transmission line, so no feeding into residences of Lowell. As for the in-line inspection technology, there is a substantial difference between distribution and transmission line. The explosion out in California years ago is more of a driver for this type of inspection. Commissioner Lovely said that he thinks it's great that it will help in prevention of methane leaks, which are an even worse form of greenhouse gas emissions than CO2.

Commissioner Varnum asked if they could use horizontal drilling in whole project. Mr. Hayward said that they did look at it, but comes down to soil stability, ledge and room available on each side of the drill, so different space restrictions exist going under the highway versus going through the wetland. Open cut best way to help preserve the wetland.

Commissioner Dillon asked for an estimated lifespan of pipeline getting installed. Commissioner Buitenhuis said he would like to hear about lifetime expectation of existing line as well. Mr. Hayward stated that these lines are designed around integrity/demand. If line is regularly maintained and coated, should last a long time. Some parts of this pipe are over 50 years old. The project also includes a reforestation mitigation plan that includes monitoring for 5 years and corrective actions, as needed if regrowth isn't occurring. Ms. Schutzman said they would also monitor invasive species and keep up with that maintenance to let the natural species have better likelihood for regrowth. Commissioner Dillon asked if this would include Knotweed? Ms. Patisteas said yes this would be an invasive species we would treat if in the area, as well as bittersweet. Commissioner Dillon asked what does management look like if growth is satisfactory in 5 years. Ms. Patisteas said that per federal standards, only herbaceous species will be allowed to grow over the pipeline as deep-rooted trees would be a problem. Therefore the corridor would likely include shrubs within 10 feet of either side of the pipeline, with trees likely beyond that.

Commissioner Standish asked for further explanation on the difference between 50ft crossing versus 75ft crossing in some areas. Ms. Patisteas explained the different needs for stockpile area depending on soil conditions (wetness), while also confirming that erosion controls will be in place. Commissioner Standish asked about turbidity in the water. Ms. Patisteas stated that this would likely not be an issue because water will be hitting a pad as opposed to directly discharging to the streambed. Commissioner Standish then asked when the applicant planning on doing the work. An exact date wasn't given as there are a number of factors that will influence the schedule. Commissioner Standish asked how much fill will the mulch generate. Ms. Patisteas stated that they will be using a straw mulch, which will be just enough to prevent erosion.

Commissioner Buitenhuis pointed out that the applicant noted no leaks in the past, any repairs in past that were preemptive and kept leaks from occurring. In other words, why isn't the applicant spending money in other areas that may already have leaks. Mr. Hayward said that they are being proactive, and without inline tool inspection they can only get so much information currently. Commissioner Buitenhuis asked what federal regulation is requiring this and if it is based on size. Mr. Hayward responded that it is from federal regulations on transmission lines in general. Commissioner Buitenhuis stated that he does not see the rationale for being proactive, when there hasn't been any issues for decades. Mr. Hayward responded that he feels the applicant is being proactive on safety. Commissioner Buitenhuis said he is trying to weigh the impacts to safety vs the environmental impact of doing this project and asked if the inline systems can be used in smaller pipelines. Mr. Hayward responded yes, but current technology doesn't allow for tools to go through different size pipes.

Commissioner Standish asked when they are due for the next inspection, just had one recently, so about 7 years.

Commissioner Lovely noted that going from an ex-situ to in-situ inspection system would provide real-time data and at a greater frequency.

Commissioner Downs had applicant clarify why having a 75-ft corridor was necessary.

Commissioner Standish asked if applicant has drafted any geotechnical reports? Ms. Schutzman said that they do have survey of area and have talked about reducing impacts at nauseam. The driving force for this project is safety and that really trumps everything else. Commissioner Downs said he would agree with Commissioner Lovely that having constant monitoring provides better safety for the public, especially when considering the temporary impacts to the wetlands. Ms. Schutzman emphasized that repairs have been done to the line., but nothing major, and all have been done in conjunction with inspections.

Spoke on Project: Neil Dale. Stated that the project has been proposed 3 different times over the years. First time was for capacity, second and now this time for safety. He doesn't feel this project is necessary, and would like to know if there are other options for the inspections. He hasn't seen any research that says the current inspection protocol is inferior to inline devices. He also noted that: (1) this project would give National Grid 4 times the current natural gas supply; and (2) the proposed route is going around movie theater parking lot when compared to position of current line in parking lot. Consequently, wouldn't be adjacent to wetlands in this stretch, and therefore he feels that that the applicant shows any value for the wetlands.

Cormac Hondros-McCarthy, member of Lowell Sustainability Project, also noted that the original reason for the pipeline was to increase supply and he feels that this runs counter to what City is trying to do via City Master Plan. He asked what National Grid can do to help City get to 100% renewables?

Jay Mason, 415 Pawtucket St, Chair of LSC, stated that he has reviewed a number of documents over the years and sent a number of questions for National Grid. Mr. Hayward responded by saying that the applicant has updated their website with answers to some of those questions. Mr. Mason said he thinks we should have some answers on the most recent questions, including whether the project would be able to help on 176 known leaks throughout the City? Mr. Hayward said unfortunately no, because those leaks are on distribution lines and this project is on the transmission side of the supply.

Jon Grossman, Varnum Ave, asked why the applicant is replacing a line that doesn't have leaks vs ones that do and whether abutters to project been notified? If abutters were notified, were the notifications in any language other than English? Ms. Patisteas stated that yes, anyone within 300 feet was notified and that notification was sent in English, but we also had translators available at public meetings about the project when it was discussed with abutters in Highlands area. He also asked why the line in the movie theater parking lot is being moved. Mr. Hayward said this was a request made by the property owner to move to the edge vs in center of parking lot. Mr. Grossman then asked how project is contributing to City's goal of 100% renewables? Ms. Patisteas questioned is germane to the WPA.

Commissioner Lovely suggested at this point to take time to address questions and come back with responses.

Commissioner Standish stated that he still doesn't know why need 75-foot clearing and feels the sun going to "torch" wetlands.

Marissa Dupont – agree with others that feel like wetlands needs to be prioritized. Understand movie theatre needs parking, but being used right now. She still feels like it is like the initial proposal to increase capacity.

Commissioner Varnum expressed that they haven't received a close up view of areas to be impacted, more of a sky-high view. Usually with a project of this scale, we survey areas planned for tree removal, then consider whether some of the more mature and healthy trees can be preserved.

Commissioner Standish said he would like to see real plans, especially with something that has 10 acres of clearing. He sees replication and paying for it identified as a goal, but not minimizing impact.

Commissioner Varum asked if more detailed plans are available. Ms. Schutzman said that they do have them and will try to provide the Commission with specific plans for portions of project that will take place in Lowell.

Commissioner Buitenhuis asked National Grid to respond to questions from community groups and from the Commission in writing.

Commissioner Lovely said that he feels like applicant gave good overview of the project and suggests continuing the NOI to 1/13/21 meeting, while also looking to the applicant to provide answers questions related to the process used to reach its preferred alternative for the work (i.e., avoid/minimize/mitigate hierarchy), and provide additional clarity and detail as to why need 75 feet clearing is needed along the entire project corridor. He also suggested that the applicant further explain why the in-line inspection method is better and why it can only be done with a uniform pipe diameter. Lastly, considering the questions raised at this hearing, is there a way to modify the preferred alternative to further minimize the wetland impacts presented in the plan?

Commissioner Varum said that if the NOI hearing is going to be continued, the applicant should use the time wisely to answer questions and modify the plans as best as possible. Maybe take another look of what is needed in light of comments that have come forward?

Motion:

Commissioner Buitenhuis motioned and Commissioner Lovely seconded to continue to 1/13/2021. The motion passed unanimously 6-0.

OTHER BUSINESS

Minutes

October 14, 2020

October 28, 2020

November 12, 2020

Commissioner Lovely motioned to approve the minutes as revised and submitted to Fran today. Commissioner Standish seconded. Unanimously approved, 6-0.

ADJOURNMENT

Commissioner Lovely motioned and Commissioner Standish seconded to adjourn. Unanimously approved, 6-0.

Meeting end: 9:43PM